REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

C.T.A. EB NO. 440
(C.T.A. Case No. 7021)

Present:

-versus-

Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, JJ.

CHAILEASE FINANCE CORPORATION,
Respondent.

Promulgated:
AUG 28 2009 [illegible] 3:10 p.m.

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DECISION

BAUTISTA, J.:

The Case

Before Us is a Petition for Review[1] filed by the Commissioner of Internal Revenue pursuant to paragraph 2, Section 18 of Republic Act No. 1125, as amended

[1] *Rollo*, C.T.A. EB No. 440 (C.T.A. Case No. 7021), pp. 5 – 96, with Annexes.

by Republic Act No. 9282 and Rule 8, Section 4(b) of the Revised Rules of the Court of Tax Appeals, praying for the reversal of:

1. the Resolution[2] dated June 5, 2008 rendered by the Second Division of the Court ("Court in Division") in CTA Case No. 7021, which cancelled petitioner's assessments for deficiency income, percentage, withholding and documentary stamp taxes for taxable year 1999 for having been issued beyond the prescriptive period; and
2. the Resolution[3] of the Court in Division promulgated on November 11, 2008, which denied petitioner's Motion for Reconsideration for lack of merit.

The Facts

Petitioner is the duly appointed Commissioner of Internal Revenue, with office address at the BIR National Office Building, Agham Road, Quezon City.[4]

Respondent is a finance corporation duly organized and existing under the laws of the Republic of the Philippines, with business address at Unit 1202, 12/F Antel 2000, 121 Valero Street, Salcedo Village, Makati City.[5]

On September 12, 2003, the Bureau of Internal Revenue ("BIR") Revenue Region No. 8, Makati City, issued the following Final Assessment Notices ("FANs") for taxable year 1999 against respondent:

Exhibits	Assessment Notice No.	Tax Assessed	Amount of Deficiency Tax
A	IT-4760-99-03-384	Income Tax	30,855,560.45
B	PT-4760-99-03-384	Percentage Tax	1,300,379.45
C	WE-4760-99-03-384	Expanded Withholding Tax	407,220.69
D	DS-4760-99-03-384	Documentary Stamp Tax	4,503,099.03

[2] *Rollo*, pp. 12 – 20.
[3] *Id.*, at pp. 21 – 23.
[4] *Id.*, at p. 6.
[5] *Id.*, at p. 82.

For the following internal revenue taxes, respondent filed the corresponding returns:

INCOME TAX		
Exhibit	Period Covered	Date Filed
J	Calendar Year 1999	April 28, 2000
PERCENTAGE TAX		
Exhibit	Period Covered	Date Filed
K	1st Quarter 1999	April 26, 1999
L	2nd Quarter 1999	July 20, 1999
M	3rd Quarter 1999	October 25, 1999
N	4th Quarter 1999	January 14, 2000
WITHHOLDING TAX		
Exhibit	Period Covered	Date Filed
O	January 1999	February 10, 1999
P	February 1999	March 4, 1999
Q	March 1999	April 12, 1999
R	April 1999	May 7, 1999
S	May 1999	June 3, 1999
T	June 1999	July 7, 1999
U	July 1999	August 6, 1999
V	August 1999	September 9, 1999
W	September 1999	October 8, 1999
X	October 1999	November 8, 1999
Y	November 1999	December 8, 1999
Z	December 1999	January 10, 2000
AA		January 25, 2000
DOCUMENTARY STAMP TAX		
Exhibit	Period Covered	Date Filed
CC, DD, EE	January 1999	January 7, 1999
FF, GG, HH		February 1, 1999
II		March 11, 1999
KK, LL	February 1999	February 1, 1999
MM, SS		February 12, 1999
PP, QQ		February 18, 1999
TT		February 18, 1999
BBB		February 24, 1999
VV		February 26, 1999
WW		July 15, 1999
YY, ZZ, AAA		March 11, 1999
DDD, EEE, GGG, HHH	March 1999	March 2, 1999
JJJ		March 25, 1999
MMM, NNN, OOO		March 17, 1999
PPP, UUU, VVV		March 23, 1999
QQQ, WWW		March 24, 1999
KKK, SSS, TTT		March 25, 1999
RRR		May 5, 1999
DDDD	April 1999	April 6, 1999
YYY, ZZZ		April 21, 1999
AAAA		April 27, 1999
EEEE, FFFF, HHHH		May 5, 1999

GGGG		May 13, 1999
IIII		May 25, 1999
GGGGG	May 1999	May 5, 1999
KKKK, LLLL		May 7, 1999
NNNNN		May 13, 1999
NNNN, OOOO, JJJJJ		May 14, 1999
QQQQ, RRRR		May 18, 1999
TTTT, UUUU		May 19, 1999
WWWW, XXXX		May 21, 1999
ZZZZ, AAAAA, HHHHH, IIIII, KKKKK		May 25, 1999
SDDDD		May 26, 1999
FFFFF, MMMMM		May 27, 1999
LLLLL		June 3, 1999

In addition to the foregoing exhibits, respondent also presented the following exhibits of the independent certified public accountant ("CPA") representing respondent's documentary stamp tax payments, as follows:

a. For Documentary Stamp Tax Returns and Payments covering June 1999 up to and including December 1999 –

Summaries on respondent's monthly loan releases for purposes of the documentary stamp taxes on loan releases:

CPA Exhibits Nos. "B" – "B-5" – January 1999
CPA Exhibits Nos. "C" – "C-8" – February 1999
CPA Exhibits Nos. "D" to "D-10" – March 1999
CPA Exhibits Nos. "E" to "E-7" – April 1999
CPA Exhibits Nos. "F" to "F-15" – May 1999
CPA Exhibits Nos. "G" to "G-9" – June 1999
CPA Exhibits Nos. "H" to "H-17" – July 1999
CPA Exhibits Nos. "I" to "I-12" – August 1999
CPA Exhibits Nos. "J" to "J-15" – September 1999
CPA Exhibits Nos. "K" to "K-11" – October 1999
CPA Exhibits Nos. "L" to "L-5" – November 1999
CPA Exhibits Nos. "M" to "M-14" – December 1999

(as detailed out and specifically described in the List entitled "Loan Releases, **Annex "A"** of petitioner's "Motion to Adopt Certain Exhibits of the Independent CPA" dated 14 July 2006)

Summaries on the respondent's monthly DST payments on its loan releases:

CPA Exhibits Nos. "V" – "V-47" and "G-0-1" – June 1999
CPA Exhibits Nos. "W" to "W-79", "H-0-1" to "H-2-1" and "H-6-1" to "H-9-1" – July 1999
CPA Exhibits Nos. "X" to "X-62" and "I-0-1" to "I-8-1" – August 1999
CPA Exhibits Nos. "Y" to "Y-73", "J-9-1", "J-11-1" to "J-14-1" – September 1999
CPA Exhibits Nos. "Z" to "Z-56", "K-0-1" to "K-1-1", "K-3-1" to "K-6-1" – October 1999

CPA Exhibits Nos. "AA" to "AA-53", "AA-56" to "AA-74", "L-0-1", "L-2-2", and "L-3-1" - November 1999
CPA Exhibits Nos. "BB" to "BB-94", "M-5-1" to "M-10-1" and "M-12-1" to "M-14-1" - December 1999

(as detailed out and specifically described in the List entitled "Loan Releases, **Annex "B"** of respondent's "Motion to Adopt Certain Exhibits of the Independent CPA" dated 14 July 2006)

b. DST Returns and Payments regarding the respondent's Real and Other Personal Property Owned and Acquired ("ROPOA") Accounts -

For the period 1999

CPA Exhibits Nos. "TTT" to "TTT-1" and "XXX" to "XXX-1" - BMG Trading
CPA Exhibits Nos. "UUU" and "YYY" - Gene Urbano de Leon
CPA Exhibits Nos. "VVV" and "ZZZ" to "ZZZ-2" - Metro Tours/Huang, Margaret Tee
CPA Exhibits Nos. "WWW" and "AAAA" to "AAAA-4" - Federal Builders

(as detailed out and specifically described in the List entitled Real and Other Personal Property Owned and Acquired ("ROPOA") for the period 1999, **Annex "C"** of respondent's "Motion to Adopt Certain Exhibits of the Independent CPA" dated 14 July 2006)

For the period prior to 1999

CPA Exhibits Nos. "ZZ" to "ZZ-1" and "JJJ" to "JJJ-1" - A. Paguio Junk Shop
CPA Exhibits Nos. "AAA" to "AAA-1" and "KKK" to "KKK-1" - Citybook Supply
CPA Exhibits Nos. "BBB" and "LLL" to "LLL-1" -Energym Fitness Club
CPA Exhibits Nos. "CCC" to "CCC-4" and "MMM" to "MMM-3" - Jessan Metal Works
CPA Exhibits Nos. "DDD" and "NNN" - Jorge Vistan
CPA Exhibits Nos. "EEE" to "EEE-2" and "OOO" - Larew International Trade and Manufacturing, Inc.
CPA Exhibits Nos. "FFF" to "FFF-1" and "PPP" - Miracle Air-Sea International Corporation
CPA Exhibits Nos. "GGG" to "GGG-1" and "QQQ" - R.U. Transport Forwarders
CPA Exhibits Nos. "HHH" and "RRR" - AMV Enterprises
CPA Exhibits Nos. "III" and "SSS" to "SSS-1" - Kaung Shaing Lin

(as detailed out and specifically described in the List entitled Real and Other Personal Property Owned and Acquired ("ROPOA") for the period prior to 1999, **Annex "D"** of respondent's "Motion to Adopt Certain Exhibits of the Independent CPA" dated 14 July 2006)

c. DST filing of returns and payment on respondent's original issuance of shares - Exhibit Nos. "VV", "WW", and "XX" (as detailed out and specifically described in the List entitled "DST on Original Issuance of Shares, **Annex "E"** of respondent's "Motion to Adopt Certain Exhibits of the Independent CPA" dated 14 July 2006)[6]

[6] *Rollo*, pp. 12 – 16.

On October 13, 2003, respondent, through its Assistant Vice-President, filed its protest letter dated October 9, 2003, together with supporting documents and requested the reconsideration and/or reinvestigation of the subject assessment.[7]

On December 11, 2003, respondent submitted the rest of the documents in support of its protest.[8]

The said protest was not acted upon by the BIR Revenue Region No. 8, Makati City within one hundred eighty (180) days from December 11, 2003 pursuant to Section 228 of the National Internal Revenue Code ("NIRC") of 1997. Hence, respondent filed a Petition for Review with this Court on July 8, 2004.[9]

On September 24, 2004, petitioner filed his Answer after being granted by the Court in Division two (2) extensions for the filing thereof.[10]

After the Pre-trial conference, the submission of the parties' Joint Stipulation of Facts and the initial presentation of respondent's (petitioner therein) evidence, respondent filed on July 14, 2006 a "Motion to Adopt Certain Exhibits of the Independent CPA" and a "Motion to Resolve Issue of Prescription."[11]

On October 23, 2006, respondent finished the testimony of its independent CPA. Thus, the Court in Division ordered respondent to submit its Formal Offer of Evidence.[12] On December 28, 2006, respondent filed its "Formal Offer of Evidence" on its "Motion to Resolve Issue of Prescription."[13]

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[7] *Records*, C.T.A. Case No. 7021, pp. 26 – 39.
[8] *Id.*, at pp. 40 – 41.
[9] *Id.*, at pp. 1 – 290, with Annexes.
[10] *Id.*, at pp. 300 – 304.
[11] *Id.*, at pp. 1049 – 1155.
[12] *Id.*, at p. 1164.
[13] *Id.*, at pp. 1182 - 1234.

In a Resolution dated February 12, 2007, the Court in Division granted the "Motion to Adopt Certain Exhibits of the Independent CPA" and admitted most of respondent's Exhibits.[14]

Subsequently, petitioner (respondent therein) presented his evidence on the issue of prescription and submitted his Formal Offer of Evidence which was admitted by the Court in Division in its Resolution dated June 19, 2007.[15]

After several re-settings, respondent presented its rebuttal evidence on the issue of prescription. Its Formal Offer of Rebuttal Evidence was admitted by the Court in Division in its Resolution promulgated on January 3, 2008.[16]

Thereafter the parties were required to file their Memoranda. Only respondent filed its Memorandum. Hence, the "Motion to Resolve Issue of Prescription" was submitted for resolution.

The Ruling of the Court in Division

On June 5, 2008, the Court in Division rendered a Resolution in favor of respondent.

The Court in Division found that since respondent filed its Annual Income Tax Return for the year 1999 on April 28, 2000 and all its other returns were filed prior to the said date, the last day for petitioner's assessment for any deficiency income tax falls on April 28, 2003, while the last day for petitioner's assessment for any deficiency percentage, withholding and documentary stamp taxes is prior to the said date. As petitioner issued the disputed assessments on September 12, 2003, the same are barred by prescription.

[14] *Records*, pp. 1242 – 1247.
[15] *Id.*, at pp. 1287 – 1288.
[16] *Id.*, at pp. 1321 – 1322.

The Court in Division also found defective respondent's copy of the "Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code" ("waiver")[17] due to the following reasons:

a) The waiver did not contain the date when the period to assess is extended; and

b) The waiver was not signed by the Commissioner of Internal Revenue considering that the assessed amount exceeds ₱1,000,000.00.

Hence, the Court in Division ruled that since the said waiver is invalid, it failed to extend the prescriptive period to assess deficiency taxes. Thus, the subject Assessment Notices are already time-barred.

The *fallo* of the Resolution of the Court in Division reads:

> **WHEREFORE,** premises considered, the petitioner's[18] motion is hereby **GRANTED.** Accordingly, the instant Assessments for deficiency income, percentage, withholding and documentary stamp taxes for taxable year 1999 are hereby **CANCELLED** for having been issued beyond the prescriptive period.
>
> **SO ORDERED.**

Aggrieved, petitioner filed a "Motion for Reconsideration" arguing that the Court in Division erred in using respondent's copy of the waiver marked as *Exhibit "Y5"* which is the certified true copy of the waiver submitted by the Notary Public to the Notarial Section of the Regional Trial Court of Makati City --- Office of the Clerk of Court (RTC-OCC), instead of petitioner's copy of the waiver marked as *Exhibit "1"*[19].

In a Resolution promulgated on November 11, 2008, the Court in Division denied petitioner's "Motion for Reconsideration" and ruled that it cannot consider

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[17] *Records, Exhibit "Y5"*, p. 1316.
[18] Herein respondent.
[19] *Records*, p. 1270.

petitioner's copy of the waiver marked as *Exhibit "1"* as valid since the same does not show that respondent received its copy of the waiver after the BIR's acceptance thereof.

The Issues

Hence, the present recourse with petitioner raising the lone issue of whether his assessments against respondent are time-barred.

Fundamentally, the controversy here deals with which copy of the waiver should be considered and whether such waiver is valid, thereby extending the original three-year prescriptive period so as to make the subject Assessment Notices valid. The critical questions to be resolved therefore are: (1) Which copy of the waiver should be considered, (2) Is the waiver valid? and (3) Had the three-year period to assess internal revenue taxes already prescribed?

The Ruling of the Court En Banc

The Petition for Review is without merit.

Under Section 203[20] of the 1997 NIRC as amended, internal revenue taxes must be assessed within three years counted from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later. This rule governs the question of prescription of the government's right to assess internal revenue taxes mainly to protect the interests of taxpayers from unreasonable investigation. For that reason, the government must assess internal revenue taxes on time so as not to extend ad infinitum the period of assessment and deny the

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[20] Section 203. Period of Limitation Upon Assessment and Collection. — Except as provided in Section 222, **internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return**, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. . . . (Boldfacing supplied).

taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of a reasonable period of time.[21]

In order to provide even better protection to the taxpayer against unreasonable investigation, the 1997 NIRC as amended, identifies the circumstances when the prescriptive periods for assessing and collecting taxes could be suspended or interrupted.

Under paragraphs (b) and (d) of Section 222 of the 1997 NIRC as amended, the prescriptive periods for assessment and collection of national internal revenue taxes, respectively, could be waived by agreement, *scilicet*:

> SEC. 222. — *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —
>
> xxx xxx xxx
>
> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.
>
> xxx xxx xxx
>
> (d) Any internal revenue tax, which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove, may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the five (5)-year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.

The agreements mentioned in the afore-quoted provisions are referred to as waivers of the statute of limitations. It bears stressing that the waiver of the statute of limitations, whether on assessment or collection, should not be construed as a

[21] Commissioner of Internal Revenue v. FMF Development Corporation, G.R. No. 167765, June 30, 2008, 556 SCRA 707.

waiver of the right to invoke the defense of prescription but, rather, an agreement between the taxpayer and the BIR to extend the period to a date certain, within which the latter could still assess or collect taxes due. The waiver does not mean that the taxpayer relinquishes the right to invoke prescription unequivocally.[22]

Thus, to be valid, a waiver of the statute of limitations under paragraphs (b) and (d) of Section 222 of the 1997 NIRC as amended, must be: (1) in writing; (2) agreed to by both the Commissioner and the taxpayer; (3) before the expiration of the ordinary prescriptive periods for assessment and collection; and (4) for a definite period beyond the ordinary prescriptive periods for assessment and collection. The period agreed upon can still be extended by subsequent written agreement, provided that it is executed prior to the expiration of the first period agreed upon.

Corollary thereto, the BIR issued Revenue Memorandum Order ("RMO") No. 20-90 on April 4, 1990 to lay down an even more detailed procedure for the proper execution of such a waiver. RMO No. 20-90 mandates that the procedure for the execution of the waiver shall be strictly followed. The relevant provisions of RMO No. 20-90 are as follows:

> In the execution of said waiver, the following procedures should be followed:
>
> 1. The waiver must be in the form identified hereof. This form may be reproduced by the Office concerned but there should be no deviation from such form. The phrase "but not after ______ 19 ___" should be filled up. This indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription. The period agreed upon shall constitute the time within which to effect the assessment/collection of the tax in addition to the ordinary prescriptive period.

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[22] Philippine Journalists, Inc. v. Commissioner of Internal Revenue, G.R. No. 162852, December 16, 2004, 447 SCRA 214.

> 2. The waiver shall be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials.
>
> Soon after the waiver is signed by the taxpayer, the Commissioner of Internal Revenue or the revenue official authorized by him, as hereinafter provided, shall sign the waiver indicating that the Bureau has accepted and agreed to the waiver. The date of such acceptance by the Bureau should be indicated. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.
>
> xxx xxx xxx
>
> 4. The waiver must be executed in three (3) copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy shall be indicated in the original copy.
>
> 5. The foregoing procedures shall be strictly followed. Any revenue official found not to have complied with this Order resulting in prescription of the right to assess/collect shall be administratively dealt with.

On December 16, 2004, the Supreme Court rendered a decision in the *Philippine Journalists*[23] case which emphasized the mandatory nature of the provisions of RMO No. 20-90.

On February 2, 2005, the BIR issued Revenue Memorandum Circular ("RMC") No. 06-05 which identifies the salient features of the decision of the Supreme Court in the aforementioned *Philippine Journalists* case, to wit:

> 1. A waiver of the statute of limitations under the Tax Code must conform strictly with the provisions of Revenue Memorandum Order No. 20-90 in order to be valid and binding.
>
>> 1.1. The waiver must specify a definite agreed date between the BIR and the taxpayer within which the former may assess and collect revenue taxes.

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[23] *Supra*, note 22.

1.2. The waiver must be accepted by the Commissioner of Internal Revenue or his duly authorized representative, and the date of acceptance must be indicated.

1.3. The taxpayer must be furnished a copy of the waiver accepted by the BIR.

2. A waiver of the statute of limitations under the Tax Code, to a certain extent, is a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations and must therefore be carefully and strictly construed.

3. A waiver of the statute of limitations is not a waiver of the right to invoke the defense of prescription. It is an agreement between the taxpayer and the BIR that the period to issue an assessment and collect the taxes due is extended to a date certain.

4. A waiver of the statute of limitations is not a unilateral act by the taxpayer or the BIR, but is a bilateral agreement between two parties.

With the foregoing backdrop, We shall proceed to discuss the issues in the case at bench.

Which copy of the waiver should be considered?

Petitioner avers that the Court in Division erred in applying the *Philippine Journalists* case because the said case is inapplicable considering that respondent admitted that it has executed a waiver of the defense of prescription in the parties' Joint Stipulation of Facts. Hence, it no longer requires proof.

Respondent on the other hand, admits that it executed a waiver on August 26, 2002 which was marked as *Exhibit "PPPPP"*. However, it points out that the waiver marked as *Exhibit "PPPPP"* does not bear anything which shows that it was accepted by petitioner.

Respondent likewise maintains that while *Exhibit "1"* may show on its face that the waiver was duly accepted, the Notary Public, who is petitioner's lawyer, effectively attested and confirmed that only respondent's representative signed the waiver and that there was no acceptance by petitioner. *Exhibit "1"* also does not indicate that respondent received a copy thereof after it was accepted by petitioner. As such, the waiver is void for non-compliance with the mandatory provisions of RMO No. 20-90.

We find merit in the submissions of respondent.

Respondent indeed admitted the execution, for taxable year 1999, of a waiver in the parties' Joint Stipulation of Facts and Issues.[24] However, the validity of such waiver was never admitted and is thus the crux of the controversy here, especially considering that the copies of such waiver do not match. Hence, We shall examine all three (3) copies of the waiver.

Section 4 of RMO No. 20-90 requires the waiver to be executed in three (3) copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. This presupposes that all three (3) copies are the same. In this case however, there are discrepancies in the three (3) copies of the waiver which were marked as follows:

Exhibit "PPPPP"	Exhibit "Y5"	Exhibit "1"
Executed and signed by Terence Liu on August 26, 2002.	Executed and signed by Terence Liu on August 26, 2002.	Executed and signed by Terence Liu on August 26, 2002.
Has a period of limitation of not later than September 30, 2002.	Has no period of limitation.	Has a period of limitation of not later than September 30, 2003.
Has no witness.	Has no witness.	Witnessed and signed by Teofilo J. Babaran, Jr.

[24] *Rollo*, p. 77.

Not signed by the Revenue District Officer of the East Makati Office, Simplicio A. Madulara. Notarized on August 26, 2002 by Atty. Albert C. Arpon.	Not signed by the Revenue District Officer of the East Makati Office, Simplicio A. Madulara. Notarized on August 26, 2002 by Atty. Albert C. Arpon.	Accepted and signed by Revenue District Officer of the East Makati Office, Simplicio A. Madulara on August 26, 2002 Notarized on August 26, 2002 by Atty. Albert C. Arpon.

All copies of the waiver are void

Upon close scrutiny of the three (3) copies of the waiver, We find that all of them are defective.

Exhibit "PPPPP" is respondent's copy of the waiver. It is not signed by the Revenue District Officer of the East Makati Office, Simplicio A. Madulara, thereby violating the requirement under the afore-quoted Section 2 of RMO No. 20-90 in relation to Item 1.2 of RMC No. 06-05, that after the waiver is signed by the taxpayer, the Commissioner of Internal Revenue or the revenue official authorized by him, shall sign the waiver indicating that the Bureau has accepted and agreed to the waiver. It is well to note that the waiver in question is a bilateral agreement, thus necessitating the very signatures of both the Commissioner or his duly authorized representative and the taxpayer to give birth to a valid agreement.[25]

Exhibit "Y5" is the official certified true copy of the Notary Public, Atty. Albert C. Arpon, who notarized the same and which was submitted by him to the Notarial Section of the Regional Trial Court of Makati City - Office of the Clerk of Court (RTC-OCC). It is also not signed by the Revenue District Officer of the East Makati Office, Simplicio A. Madulara, thereby violating the requirement under the

[25] *Supra* note 21 at p. 707.

said Section 2 of RMO No. 20-90 in relation to Item 1.2 of RMC No. 06-05. It also does not contain the date when the period to assess is extended in violation of Section 1 of RMO No. 20-90 that the phrase "but not after ______ 19 ___" should be filled up, in relation to Item 1.1 of RMC No. 06-05. This indicates the expiry date of the period agreed upon to assess the tax after the regular three-year period of prescription. The period agreed upon shall constitute the time within which to effect the assessment of the tax in addition to the ordinary prescriptive period.

Exhibit "1" is petitioner's copy of the waiver. It is likewise invalid since it does not show that respondent received its copy of the waiver after the BIR's acceptance thereof. Section 4 of RMO No. 20-90 clearly mandates that the fact of receipt by the taxpayer of his/her file copy shall be indicated in the original copy. In addition, Item 1.3 of RMC No. 06-05 provides that the taxpayer must be furnished a copy of the waiver accepted by the BIR. Furthermore, in the *Philippine Journalists* case, the Supreme Court explicitly pointed out that "[t]here is compliance with the provision of RMO No. 20-90 only after the taxpayer received a copy of the waiver accepted by the BIR. The requirement to furnish the taxpayer with a copy of the waiver is not only to give notice of the existence of the document but of the acceptance by the BIR and the perfection of the agreement."[26]

Petitioner also submits that the only issue with regard to the waiver is to determine the valid date when it will expire and with regard to this, credence should be given to the date submitted by petitioner (September 30, 2003) as opposed to the date being alleged by respondent (September 30, 2002). In the case of ***Bank of the Philippine Islands v. Commissioner of Internal Revenue, G.R. No. 139736, October***

[26] *Supra* note 22 at pp. 230 – 231.

17, 2005, the Supreme Court held that the waiver must have a definite period beyond the ordinary prescriptive period for assessment and collection. In this case, respondent's Income Tax Return was filed on April 28, 2000, thus, the last day to assess respondent falls on April 29, 2003. Hence, when respondent admitted that it had executed a waiver, it agreed to be assessed beyond April 29, 2003. Therefore, logic and reason dictates that the valid date is the one asserted by petitioner, which is September 30, 2003.

Petitioner's argument is untenable considering that his copy of the waiver marked as *Exhibit "1"* is as previously discussed, defective and void.

The period to assess has prescribed

In fine, since all three (3) copies of the waiver failed to comply strictly with the provisions of RMO No. 20-90 and RMC No. 06-05, they are not binding. Consequently, none of them validly extended the original three-year prescriptive period for the assessment of internal revenue taxes. Therefore, the subject Assessment Notices which are all dated September 12, 2003, are time-barred. The waivers were incomplete and defective and thus, the three-year prescriptive period was not tolled nor extended and continued to run until April 29, 2003.

As a final note, We must reiterate that the Supreme Court has consistently ruled that the statute of limitations on assessment and collection of taxes is for the protection of the taxpayer and, thus, shall be construed liberally in the latter's favor.[27] Hence, the officers of the BIR are obliged to act swiftly "in the making of assessment so that taxpayers, after the lapse of the period of prescription, would

[27] Bank of the Philippine Islands v. Commissioner of Internal Revenue, G.R. No. 139736, October 17, 2005, 473 SCRA 225.

have a feeling of security against unscrupulous tax agents who will always try to find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of a possible opportunity to harass even law-abiding businessmen. Without such legal defense, taxpayers would be open season to harassment by unscrupulous tax agents."[28]

WHEREFORE, the petition is **DISMISSED.** Accordingly, the impugned Resolutions of the Court in Division dated June 5, 2008 and November 11, 2008 in C.T.A. Case No. 7021 are **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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[28] *Supra* note 21 at p. 710.

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice